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Successions - Testimony Disinherison - Effect of Reconciliation

A. B. R.

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given manually must be small in proportion to the fortune of the donor in order to be exempt from collation. There is ground, therefore, for the view that Article 1245 of the Code of 1870 prescribes a method by which the disposable portion can be given to a forced heir free from the obligation to collate.¹⁶ However, since a parent might make a manual gift to a child without intending that it be exempt from collation, it is suggested that the intention of the donor should be determined from the facts and circumstances of the case, as is done in France.

The basis of collation, which originated in the Roman law,¹⁷ is the presumption that the heirs are to share equally.¹⁸ This presumption is overcome, however, and collation is not required when the act of donation expressly exempts it or when it is made by manual gift. But only corporeal movable effects may be given by manual gift.¹⁹ The instant case attains a highly desirable result in that it refuses to extend the class of things which may be exempted from collation, and thus further insures equality among the forced heirs.

E. A. M.

SUCCESSIONS—TESTAMENTARY DISINHERISON—EFFECT OF RECONCILIATION—Defendant was disinherited in her mother's will and in the four wills of her father for having married while a minor without the consent of her parents. After the death of both par-

would seem to indicate that they did not mean the same thing as was provided in the Code of 1808. A contrary view would be that the redactors adopted the notion of *presens d'usage* in the article exempting manual gifts from collation.

16. See Succession of Turgeau, 130 La. 650, 58 So. 497 (1912), in which the decedent gave his wife by manual gifts checks exceeding in value the disposable portion. Reduction was allowed in favor of the forced heir, but the gifts were held good for the amount of the disposable portion. Since manual gifts to a forced heir are exempt from collation, the parent should be allowed to give the disposable portion by manual gift to one of his forced heirs free from obligation of collation.

In a French case, Cass. 12 mars 1873, Sirey 1873.I.208, the donor had already disposed of the disposable portion at a profit to one of his heirs. It was held that manual gifts to other heirs, which would have had to be out of the forced portion, were exempt from collation, apparently implying that not only can the disposable portion be given to an heir by manual gift with exemption from collation, but also that part of the forced portion can be given by manual gift to an heir free from any obligation to make a return to the other heirs.

17. D. 37.6; C.6.20.

18. Arts. 1229, 1230, La. Civil Code of 1870.

19. Art. 1539, La. Civil Code of 1870. For a discussion of what may be the subject of a manual gift, see Comment (1935) 9 Tulane L. Rev. 602.

ents their successions were consolidated. In a suit brought by the other children of the marriage to prove the facts on which the disinheritance was based, defendant introduced evidence of various acts of kindness and friendship toward her by her parents and contended that these showed forgiveness and condonation of her offense. *Held*, a disinheritance contained in a testament will not be sustained when the parents have been reconciled to the child and have thus condoned the cause for disinheritance. *Successions of Spiro*, La. Sup. Ct. Docket No. 36,066 (1941).

While the Louisiana Civil Code requires disinheritance to be made in one of the forms prescribed for testaments,¹ it mentions expressly no method whereby such a provision, once embodied in a will, may be revoked. Although the instrument revoking a testamentary disposition must be made in one of the forms prescribed for testaments,² a disposition may be revoked tacitly;³ it is also arguable that disinheritance is not a testamentary *disposition* since it makes no legacy.⁴

The court drew an analogy to the instant case from the rule that an heir may not be excluded for unworthiness if his fault has been pardoned by the injured person;⁵ forgiveness in such case may be found in mere failure to disinherit a child where there is sufficient opportunity to do so between the time the injured parent learns of the wrong and his death.⁶ More reliance, however, was placed on the theory that the Code articles were intended by the redactors to be treated in the light of the jurisprudence of the countries from which they were derived. In Spain the rule is that any reconciliation between parent and child removes the cause for disinheritance.⁷ In France, the suit to exclude for unworthiness was substituted for disinheritance.⁸ But under the French Code lack of consent of the parents to the marriage of parties of certain ages is ground for annulment,⁹ and this

1. Art. 1618, La. Civil Code of 1870.

2. Art. 1692, La. Civil Code of 1870.

3. Arts. 1691, 1695, La. Civil Code of 1870.

4. "Testamentary dispositions are either universal, under a universal title, or under a particular title." Art. 1605, La. Civil Code of 1870.

5. Art. 975, La. Civil Code of 1870.

6. *Ibid.*

7. Art. 856, Spanish Civil Code. 6 Manresa, *Comentarios al Código Civil Español* (1932) 586-587, Art. 856; 6 (3) Sánchez Román, *Estudios de Derecho Civil* (1889) 1129, c. 16, n° 31; 5 Valverde, *Tratado de Derecho Civil Español* (1925) 316, c. 13, § 2.

8. 3 Colin et Capitant, *Cours de Droit Civil Français* (8 ed. 1934) 472, n° 610; 3 Planiol, *Traité Élémentaire de Droit Civil* (11 ed. 1938) 391, n° 1733-1736.

9. Art. 182, French Civil Code.

cause is completely lost once the parents indicate in any manner that they have forgiven the marriage.¹⁰ Prior to the Code Napoleon, despite some conflict in the decisions, the prevailing opinion in Northern France seems to have favored tacit revocation of a disinheritance clause,¹¹ although Southern France held to the Roman tenet that revocation could be only by testament.¹² Suitable emphasis is placed by the Louisiana court on the statement that the customary law embodied the *majority* view; nor is Article 21, the famous "equity rule," overlooked.

The issue presented here had arisen only once before, in *Successions of Burns*.¹³ The question of law was not then directly presented or decided, for the court found that there had been no reconciliation. However the conclusion that a tacit pardon of a child's offenses removes the parent's power to disinherit harmonizes with the spirit of the codal provisions restricting the right to disinherit,¹⁴ safeguarding the forced portion,¹⁵ and emphasizing the curative effect of reconciliation.¹⁶ Even where the greater freedom of common law testamentary disposition is allowed disinheritance is not favored;¹⁷ all the property in an estate must be expressly willed to another to prevent the party sought to be disinherited from succeeding to whatever portion of the succession goes intestate.¹⁸ In a civil law jurisdiction which curtails the freedom of the testator in the interest of family, children, and society, this restriction on the right to punish for an offense that has been condoned and forgiven should be welcomed.

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10. Art. 183, French Civil Code. 7 Aubry et Rau, *Cours de Droit Civil Français* (5 ed. 1913) 113, § 462; 1 Planiol, *op. cit.* supra note 8, at 385, no 1078.

11. 5 Merlin, *Répertoire Universel et Raisonné de Jurisprudence* (4 ed. 1812) verbo "Exhérédation," 3-9, § 3; 8 Pothier, *Oeuvres* (2 ed. 1861) 28, c. 1, § 2.

12. Pothier, *loc. cit.* supra note 11.

13. 52 La. Ann. 1377, 27 So. 883 (1900).

14. Arts. 1617-1624, La. Civil Code of 1870.

15. See Arts. 1502-1518, La. Civil Code of 1870.

16. See Arts. 152, 975, La. Civil Code of 1870.

17. See, for example, the statements in *Wilson v. Rand*, 215 Ala. 159, 160, 110 So. 3, 4 (1926); *Ansonia National Bank v. Kunkel*, 105 Conn. 744, 749, 136 Atl. 588, 589 (1927); *Barker v. Haner*, 111 W. Va. 237, 240, 161 S.E. 34, 35 (1931).

18. In *re Fritze's Estate*, 85 Cal. App. 500, 259 Pac. 992 (1927); *Dailey v. Dailey*, 224 Ill. App. 17 (1921); *Duff v. Duff's Ex'rs*, 146 Ky. 201, 142 S.W. 242 (1912); *Bradford v. Leake*, 124 Tenn. 312, 137 S.W. 96 (1911).